



Appeal Decision

Site visit made on 2 April 2024

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19/04/2024

Appeal Ref: APP/V2004/X/23/3332279

6 Fitzroy Street, Kingston upon Hull, Yorkshire HU5 1LL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("The Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Dr and Mrs John and Elaine Underwood against the decision of Kingston-Upon-Hull City Council.
 - The application ref 23/00455/LAW, dated 3 April 2023, was refused by notice dated 26 May 2023.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which an LDC is sought is: Existing use as a large *sui generis* House in Multiple Occupation for 7 occupants.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

Preliminary Matter

2. The description of the use is taken from the appellants' statement of case, which accords with the description in the Council's decision notice.

Main Issue

3. The main issue is whether the Council's refusal to issue an LDC was well founded. The responsibility for providing sufficient information to support an LDC application or appeal primarily rests with an applicant or appellant. However, if no other evidence contradicts or otherwise makes their version of events less than probable, and provided their evidence is sufficiently precise and unambiguous, there is no good reason to withhold an LDC.
4. The appeal will therefore turn on whether the use as a large *sui generis* House in Multiple Occupation (HMO) for 7 occupants was instituted on or before 3 April 2013, 10 years before the date the application was made, and continued for a period of not less than 10 years without significant interruption. The onus is on the appellants to demonstrate this on the balance of probability.

Reasons

5. Section 254(2) of the Housing Act 2004 contains a standard test for defining an HMO. The appellants contend that the premises have been used in accordance with that definition, with 7 resident occupiers, for a period of not less than 10 years that began in September 2012. The Council accepts, on the balance of probability, that has been demonstrated, but only for a continuous period of some 7 years at best, not for the required minimum of 10 years.

6. The Council considers that the occupation of the premises since November 2019 as supported accommodation under a head lease to Doorstep of Hull ("Doorstep") is materially different from use as an HMO. It views it as more akin to a use within Use Class C3(b) or Use Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) ("the Order"), each of which involves the provision of care to residents, or a non-HMO *sui generis* use.
7. An LDC is sought for occupation by 7 residents and Use Class C3(b) is occupation by not more than 6 residents. While the number of residents fell to 6 between October 2022 and May 2023, the appellants' evidence indicates that this was due to confusion over the status of the HMO licence. In any event, there is no evidence that the 6 residents formed a single household, which is a defining characteristic of a Class C3(b) use, at that time. I shall therefore consider Class C3(b) no further.

8. Relevant to this appeal, the Order defines care as:

Personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment.

9. The occupation of the premises as supported accommodation is described briefly in correspondence from Doorstep. This states that the support provided to residents is not considered to have made a material difference to the premises' status as an HMO. It is explicitly stated that "Doorstep of Hull do not provide care and therefore the property cannot be classed as C2 which is for residential care homes." In Doorstep's view, no material change of use has occurred, and the premises have not been used more intensively than or differently from a typical HMO.
10. Doorstep further states, "we attempt to help each resident secure move on accommodation when it is felt they are ready to move on from us to their own independent accommodation." This is also described as 'housing related support', meaning assistance in taking the next step away from homelessness, not in living at the appeal premises, and does not fall within the Order's definition of care. If Doorstep considers there may be a need for care, it refers to other bodies, including mental health and addiction services, for assessment. There is no indication that any organisation has provided such care at the premises or that any support or care worker has been based there.
11. Like any other member of society, a homeless person may require care due to old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder. However, there is no evidence of such care being given to any resident of the premises. In contrast, Doorstep's evidence that it has not provided such care at the premises is precise and unambiguous. Furthermore, there is no evidence of occupation by children or the provision of medical care and treatment. Accordingly, with no care provided, the use of the premises under Doorstep's head lease did not fall within Class C2.
12. It is accepted that the premises had been used as a large HMO prior to Doorstep taking the head lease. The Council has noted that, under Doorstep's management, residents had curfews to return to the premises by set times, that house rules were in place and that guests were not allowed to visit. In response, Doorstep confirms that it places no restrictions on residents' comings

and goings and that visitors are allowed, although generally not overnight. It does not deny there are house rules but believes there would be in any HMO.

13. At the time of my site visit, various notices were displayed in the kitchen, in the hallway, in a toilet and on bathroom and toilet doors. They appeared to be house rules concerned with safe and effective use of the premises. Examples included keeping fire escape routes unobstructed, not pouring cooking oil down the kitchen sink, and not flushing paper towels down the toilet.
14. While my observations are merely a snapshot, I have not been given details of any other house rules that may have been in effect when the application was made. I see no reason to believe that obeying rules such as I saw would amount to care or result in a form of residential occupation of a materially different character to an HMO. While one notice described the premises as a hostel, that alone does not alter the nature of the residential occupation. Doorstep acknowledges that it uses the word 'hostel' in other settings, but it explains that this is for the purposes of housing benefit regulations and in respect of legal protections from eviction.
15. Each bedroom is occupied separately and subject to an individual license from a non-resident head lessee. No bedroom contains all the facilities required for day-to-day private domestic existence and all residents share basic amenities for washing and cooking. The use of licences rather than tenancies is not determinative; it is the way the residents use the premises that matters. While homeless people may be more transient than other HMO occupiers, I have not been given evidence of turnover so rapid as to be characteristic of a hostel.
16. Furthermore, there is no evidence that the rules and support described above alter the way residents use the premises and relate to each other, compared with a typical HMO use. As such, and based on the available evidence, the use of the premises since November 2019 has been as a large HMO, not as a dwellinghouse or as a *sui generis* residential use other than an HMO. With the previous use since September 2012 also considered, the use as an HMO for 7 occupants was instituted before 3 April 2013 and continued thereafter. While the reduction in the number of residents between October 2022 and May 2023 is longer than might normally be expected through turnover, I do not find it to be a significant interruption having regard to the explanation given.

Conclusion

17. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of a large *sui generis* HMO for 7 occupants was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

Mark Harbottle

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 3 April 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the premises as a large *sui generis* House in Multiple Occupation for 7 occupants began more than 10 years before the date of the application and continued for a period of not less than 10 years without significant interruption.

Signed

Mark Harbottle

Inspector

Date: 19 April 2024

Reference: APP/V2004/X/23/3332279

First Schedule

Use of the premises as a large *sui generis* House in Multiple Occupation for 7 occupants.

Second Schedule

6 Fitzroy Street, Kingston upon Hull, Yorkshire HU5 1LL

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 19 April 2024

by Mark Harbottle BSc MRTPI

Land at: 6 Fitzroy Street, Kingston upon Hull, Yorkshire HU5 1LL

Reference: APP/V2004/X/23/3332279

Scale: Not to Scale

